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Trustee in Bankruptcy

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

In re BENJA INCORPORATED,  
  
Debtor.

Case No. 20-30819-DM  
Chapter 7

**STIPULATION TO FURTHER EXTEND  
TOLLING AGREEMENT AND  
PROCEED VIA BDRP, IF NEEDED  
(JOMBOY CORP.)**

Hearing: None requested.

This *Stipulation to Extend Tolling Agreement* (the “Stipulation”) is entered into by and between A. Kyle Everett (the “Trustee”), the duly appointed Chapter 7<sup>1</sup> trustee in the above-captioned bankruptcy case, and Jomboy Corp. (the “Potential Litigant,” and together with the Trustee, the “Parties”). In support of this Stipulation, the Parties state as follows:

**RECITALS**

A. On October 15, 2020, Benja Incorporated commenced the above-captioned bankruptcy case under Chapter 11. [ECF No. 1.] The Trustee was appointed as the Chapter 11 trustee on November 3, 2020. [ECF No. 45.] The case was subsequently converted to Chapter 7

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<sup>1</sup> Unless specified otherwise, all chapter and code references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532. “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure. “ECF” references are to the docket in this proceeding.

1 on January 29, 2021, and the Trustee was appointed as the Chapter 7 trustee. [ECF Nos. 85 and  
2 88.]

3 B. The estate may have claims against the Potential Litigant, including but not  
4 limited to claims related to transfers of certain interests in property of the Debtor to or for the  
5 benefit of the Potential Litigant.

6 C. The deadline, under Bankruptcy Code section 546(a), for Trustee to commence an  
7 action against the Potential Litigant, was initially October 17, 2022. *See* § 348(a); Bankruptcy  
8 Rule 9006(a)(1).

9 D. On October 5, 2022, the Parties executed a *Stipulation for Entry of Order Re*  
10 *Tolling Agreement (Jomboy Corp)* (the “Tolling Agreement”) [ECF No. 135]. The Tolling  
11 Agreement extended the deadline for any such action by Trustee through and including April 17,  
12 2023. The Court entered an order approving the Tolling Agreement on October 6, 2022 (the  
13 “Tolling Order”) [ECF No. 136].

14 E. On April 14, 2023, the Parties filed a *Stipulation to Extend Tolling Agreement*  
15 (the “First Extension”) [ECF No. 154] whereby the Tolling Agreement was extended through  
16 and including October 17, 2023. The Court entered an order approving the First Extension on  
17 April 14, 2023 [ECF No. 155].

18 F. The Parties are in discussions and believe a further extension of applicable  
19 deadline(s) for the Trustee to file claims for relief, if any, against the Potential Litigant would  
20 benefit both Parties.

21 G. This Court has jurisdiction to extend applicable statutes of limitation, including  
22 the deadline set forth in Section 546(a). *Official Creditors’ Comm. for Qmect, Inc. v.*  
23 *Electrochem Funding, LLC (In re Qmect, Inc.)*, 349 B.R. 620, 624-25 (Bankr. N.D. Cal. 2006)  
24 (citing 140 Cong. Rec. H. 10752, H10768 (daily ed. Oct. 4, 1994) for the proposition that “[t]he  
25 time limits set forth therein are not intended to be jurisdictional and can be extended by  
26 stipulation between the necessary parties to the action or proceeding.”).

1 H. The Parties desire to extend all applicable statutes of limitation, including but not  
2 limited to the Section 546(a) deadline, by an additional 90 days, to January 16, 2024.

3 **STIPULATION**

4 1. The above recitals are incorporated by reference.

5 2. The outside date provided in the Tolling Agreement is hereby extended from  
6 April 17, 2023 to and through January 16, 2024 (the "Extension").

7 3. Other than the Extension, all other terms of the Tolling Agreement and Tolling  
8 Order remain in full force and effect and binding upon the parties.

9 4. In the event the Parties are unable to reach a consensual resolution during the  
10 Extension, the Parties further agree to submit their dispute to the Court's Bankruptcy Dispute  
11 Resolution Program, as provided in Bankruptcy Local Rules 9040-1 et seq.,  
12 <https://www.canb.uscourts.gov/procedures/local-rules/bdrp>.

13 5. This Stipulation is without prejudice to further extensions of applicable statutes of  
14 limitation by stipulation, order of the Court, or otherwise.

15 6. The Parties represent and warrant that all legal action necessary for the  
16 effectuation and execution of this Stipulation has been validly undertaken and that the  
17 individuals whose signatures appear below are duly authorized to execute this Stipulation.

18 7. This Stipulation may be executed in counterparts with the same force and effect  
19 as if executed in one complete document by all signatories thereto. Electronic signatures are  
20 sufficient to bind the Parties.

21 8. The Trustee agrees to lodge an order approving the terms and conditions of this  
22 Stipulation.

23 **IT IS SO STIPULATED.**

24 Dated: October 13, 2023

GREENBERG GLUSKER FIELDS CLAMAN &  
MACHTINGER LLP

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Keith Patrick Banner  
Attorneys for Jomboy Corp.

1 Dated: October 13, 2023

FINESTONE HAYES LLP

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3 */s/ Kimberly S. Fineman*

4 Kimberly S. Fineman  
5 Attorneys for A. Kyle Everett,  
6 Trustee in Bankruptcy  
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